

HOUSE GOVERNMENT AND URBAN AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 416

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO GUARDIANSHIP; CREATING THE OFFICE OF GUARDIANSHIP
IN THE DEVELOPMENTAL DISABILITIES PLANNING COUNCIL; PROVIDING
POWERS AND DUTIES; TRANSFERRING FUNCTIONS, PROPERTY,
CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES FROM THE
OFFICE OF THE ATTORNEY GENERAL; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Office of Guardianship Act".

Section 2. OFFICE OF GUARDIANSHIP--CREATED--STAFF.--

A. The "office of guardianship" is created in the
developmental disabilities planning council.

B. The director of the developmental disabilities
planning council shall employ a head of the office who shall be
hired on the basis of ability, experience and knowledge of

1 guardianship issues under the Uniform Probate Code. The
2 position shall be classified pursuant to the Personnel Act.

3 C. Subject to appropriations, the director may hire
4 such other professional and clerical staff as necessary to
5 carry out the purposes of the office.

6 Section 3. OFFICE--POWERS AND DUTIES. --

7 A. The office of guardianship may:

8 (1) promulgate rules in accordance with the
9 State Rules Act to carry out the provisions of the Office of
10 Guardianship Act; and

11 (2) enter into agreements with other state or
12 federal agencies to provide guardianship services and to
13 provide or receive payment for such services.

14 B. The office of guardianship shall:

15 (1) contract for the provision of probate
16 guardianship services to income-eligible incapacitated persons,
17 including temporary guardianship as provided in Section
18 45-5-310 NMSA 1978;

19 (2) provide for the recruitment and training
20 of persons interested and willing to serve as mental health
21 treatment guardians;

22 (3) provide training and information to
23 interested persons on the duties and responsibilities of
24 guardians, including alternatives to guardianship and mental
25 health treatment guardianship;

1 (4) establish procedures for the investigation
2 and resolution of complaints against contractors;

3 (5) contract for attorneys to petition the
4 district court for guardianship of persons believed to be
5 incapacitated or to seek amendment or termination of existing
6 guardianship orders if the needs or situation of wards have
7 changed; provided that the selection of persons to be served
8 under such contracts shall be made by the office based on
9 selection criteria established by rule; and

10 (6) serve as an interested person as defined
11 in Subsection I of Section 45-5-101 NMSA 1978.

12 Section 4. CONTRACT MONITORING AND ENFORCEMENT. --

13 A. The office of guardianship shall monitor and
14 enforce all guardianship contracts. In carrying out this duty,
15 the office may:

16 (1) have access to case records, copies of
17 court filings and reports and other records maintained by
18 contractors related to contract services provided unless
19 specifically sequestered by the court;

20 (2) petition the court of jurisdiction for
21 access to records that have been sequestered;

22 (3) arrange visits with wards who are served
23 by contract guardians; and

24 (4) pursue legal and other remedies against
25 contractors for noncompliance with contract provisions.

. 144757. 1

underscored material = new
[bracketed material] = delete

1 B. The office shall protect and maintain the
2 confidentiality of all client-specific information and records
3 obtained to the same extent as required for the contractor and
4 to any extent otherwise required by state or federal law.

5 Section 5. CONTRACTS. -- A contract for guardianship
6 services shall include:

7 A. a requirement that contractors and their staff
8 meet nationally recognized standards for guardianship services;

9 B. a requirement for adoption and compliance with a
10 code of ethics for guardians;

11 C. the maximum caseload for guardians;

12 D. the fee schedule for services provided;

13 E. assurance that the civil rights of wards served
14 by the contractor shall be met, including the right to be
15 served in the most integrated setting appropriate to the needs
16 of the ward;

17 F. provisions for access by the office of
18 guardianship to records, wards and contractor staff as needed
19 to monitor and enforce contract compliance and for quality
20 assurance purposes; and

21 G. minimum financial accounting and reporting
22 requirements.

23 Section 6. RESOLUTION OF COMPLAINTS. --

24 A. The office of guardianship shall establish by
25 rule for the filing, investigation and resolution of complaints

1 about guardianship services provided by contractors.

2 B. The office shall acknowledge receipt of the
3 complaint, notify all parties involved and initiate an
4 investigation within fifteen working days of the filing of the
5 complaint.

6 C. A determination shall be made and a decision
7 rendered on the complaint within sixty working days unless
8 mutually agreed upon by all parties or unless a shorter time is
9 required to protect the ward.

10 D. The office may refer complaints to other
11 agencies for investigation or prosecution, as appropriate.

12 E. Complaints against the office or a staff member
13 of the office shall be investigated by the human services
14 department.

15 Section 7. TEMPORARY PROVISION-- TRANSFERS. --

16 A. On the effective date of this act, all
17 functions, appropriations, money, records, files, furniture,
18 equipment, supplies and other property of the office of
19 guardianship services of the office of the attorney general
20 shall be transferred to the office of guardianship of the
21 developmental disabilities planning council.

22 B. On the effective date of this act, all
23 contractual obligations of the office of guardianship services
24 of the office of the attorney general shall be binding on the
25 office of guardianship of the developmental disabilities

. 144757. 1

underscored material = new
[bracketed material] = delete

1 planning council.

2 C. On the effective date of this act, all
3 references in the law to the office of guardianship services of
4 the office of the attorney general shall be deemed to be
5 references to the office of guardianship of the developmental
6 disabilities planning council.

7 Section 8. APPROPRIATION. -- One hundred thousand dollars
8 (\$100,000) is appropriated from the general fund to the
9 developmental disabilities planning council for expenditure in
10 fiscal year 2004 to establish the office of guardianship. Any
11 unexpended or unencumbered balance remaining at the end of
12 fiscal year 2004 shall revert to the general fund.

13 Section 9. REPEAL. -- Section 8-5-16 NMSA 1978 (being Laws
14 1995, Chapter 140, Section 1) is repealed.

15 Section 10. EFFECTIVE DATE. -- The effective date of the
16 provisions of this act is July 1, 2003.